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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1741

CURTIS RANDOLPH,

Petitioner,

vs.

SCHOOL DISTRICT 201,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE.

Curtis Randolph resides in School District 201 on a dead-end road .4 of a mile from the through highway. The school district has enacted a rule that its buses are to pick up the school children for transportation to school on the through highways rather than operating its buses down dead-end roads.

Randolph claims that his children should be picked up at their doorstep and that this rule which requires his children to walk .4 of a mile to the through highway is violative of due process and the equal protection clause

of the 14th Amendment to the Constitution of the United States. Accordingly, he filed suit in the circuit court of Mercer County, Illinois, asking that court to order the school district to pick his children up at their doorstep. The circuit court, after a full hearing on the merits at which a considerable amount of evidence was heard, entered judgment against Randolph, and filed a written opinion wherein the circuit court stated:—

> "Plaintiff's claim that defendant's action in refusing him pupil transportation at his door is in violation of his constitutional right to due process and the equal protection clause of the 14th Amendment is unwarranted under the record in this case."

On appeal, the Appellate Court of Illinois, Third District, affirmed. In holding that the school district's rule was a reasonable one, the Appellate Court said:—

> "Several problems are inherent in turning a large school bus around in a private driveway or dead-end road. Often in bad weather it could become stalled, as private driveways or dead-end roads are usually not as well maintained as through roads are. There is a concern that a dead-end road of less than one and a half miles in length will not, as a practical matter, be maintained as well as a through road, and at times when snow must be removed, through roads are given preference. There is also the problem of driving the bus back onto the through highway from the dead-end road."

Randolph then filed a petition for leave to appeal to the Supreme Court of Illinois but this petition for leave to appeal was denied.

Randolph took no steps to obtain a review of the decision by the Illinois courts. Instead, he started his suit all over again in the United States District Court for the Southern District of Illinois, Northern Division,

claiming that the school district's refusal to pick up his children at their doorstep amounted to discrimination under the due process and equal protection clauses of the 14th Amendment. The school district raised the defense of res adjudicata both by way of motion and in its answer.

The District Court rejected this defense, but on appeal the Circuit Court of Appeals of the Seventh Circuit reversed the District Court and remanded the case with directions to enter a summary judgment for the defendant school district. In the course of its Order the Circuit Court stated:—

> "On September 29, 1971, the Illinois Supreme Court denied plaintiff's petition for leave to appeal. This denial of leave to appeal was in essence a final decision of the Illinois Supreme Court which would have allowed plaintiff to petition for a writ of certiorari from the United States Supreme Court pursuant to 28 U.S.C. # 1257(3) (1970). *Chesapeake & Ohio Railway Co.* v. *Mihas,* 280 U.S. 102, 103-04 (1929), *Minneapolis, St. P. & S. S. M. R. Co.* v. *Rock,* 279 U.S. 410, 411-12 (1929). However, plaintiff failed to pursue this remedy.
>
> "The policies underlying the doctrine of res judicata dictate that plaintiff's unsuccessful effort in the Illinois courts should bar a subsequent action against the same defendants in federal court. *Angel* v. *Bullington,* 330 U.S. 183, 192-93 (1947), *Liddell* v. *Smith,* 345 F. 2d 491, 493 (7th Cir. 1965)."

Randolph has now petitioned this Court for a writ of certiorari. However, the decision of the Circuit Court of Appeals was based on the doctrine of res adjudicata and a review of that decision does not involve any important question of federal law as required by Rule 19 of this Court. Accordingly, we respectfully suggest that the petition for writ of certiorari should be denied.

ARGUMENT.

Inasmuch as the decision of the Circuit Court of Appeals was based on the doctrine of res adjudicata, a review of that Court's decision will merely constitute a determination of whether the doctrine was properly applied. Such a review would not involve any important question of federal law and accordingly we respectfully suggest that there are no special or important reasons for allowing certiorari and that the petition should be denied.

There would appear to be no question but that the Circuit Court of Appeals properly applied the doctrine of res adjudicata because the parties, subject matter and issues involved in the Illinois suit were identical with the parties, subject matter and issues involved in this litigation. There is no more reason to permit Randolph to relitigate this matter in the federal courts after an adverse ruling by the state courts than there would be to permit him to relitigate the matter in the state courts after an adverse result in the federal courts.

The basis of the doctrine of res adjudicata was stated by this Court in *Angel* v. *Bullington,* 330 U.S. 183, 192-193 (1947):—

> "The doctrine of res adjudicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion [citing authorities] and it has gone through, if issues that were or could have been dealt with in earlier litigation are raised anew between the same parties [citing authorities]."

Randolph's suit would be barred even if his grounds for relief were different from those presented in the Illinois courts. See Restatement, Judgments, sec. 63:—

> "Where a judgment on the merits is rendered in favor of the defendant, the plaintiff is precluded from subsequently maintaining an action on the same cause of action although he presents a ground for the relief asked other than those presented in the original action . . ."

As to the merits, we respectfully submit that the school district's policy against operating its buses down dead-end roads is a reasonable one. Through highways are generally better highways and better maintained than dead-end roads. Through highways are cleared of snow before dead-end roads and it is one thing to operate a bus on a through highway and quite another to operate a bus down a dead-end road clogged with snow and attempt to turn it around in a barnyard cluttered with farm machinery. Moreover, every time a bus is maneuvered off of and back onto a through highway from a dead-end road, there is a certain amount of hazard involved. Finally, if the defendant district were required to operate its buses down all of the dead-end roads and lanes in the district and pick up all of the children at their doorsteps, the buses would either have to start sooner and run later or the district would be compelled to obtain more buses.

Even at common law the school districts had authority to establish reasonable pick up points for the students. See 79 CJS, Schools, sec. 481, page 421:—

> "Where a school board is required by statute to furnish transportation, within the limits of what is reasonable in compliance with the statute and not un-

> reasonably discriminatory, it should be left to the board to determine the route and the time and places for gathering up the children who are to be transported, and pupils may be required to walk a reasonable distance to a point along the established route."

For cases so holding see *Hofer* v. *Hardin County Board of Education,* 441 S.W. 2d 418 (Ky., 1969); *Flowers* v. *Independent School District of Tama,* 16 N.W. 2d 570 (Ia., 1944); and *Walters* v. *State,* 248 N.W. 777 (Wis., 1933).

The Illinois legislature has expressly recognized the right of school districts to establish pick up points within 1½ miles of the students' homes in a very recent statute. See ch. 122, sec. 29-3, 1972, Supplement to Ill. Rev. Stat., 1971, which provides as follows:—

> "Such school board may comply with the provisions of this Section by providing free transportation for pupils to and from an assigned school and a pick up point located not more than one and one-half miles from the home of each pupil assigned to such point."

CONCLUSION.

The decision of the Circuit Court of Appeals was based on the doctrine of res adjudicata and a review of that decision would involve only a question of general law, not an important question of federal law. There are no special or important reasons for allowing certiorari in this case and we respectfully ask that this Court, in the exercise of its discretion, deny the petition for certiorari.

Respectfully submitted,

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